

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAQUEL SABRINA MOORE,
Plaintiff,
v.
UNITED STATE OF AMERICA,
Defendant.

Case No.: 13-cv-00931-DHB

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO RE-TAX COSTS**

[ECF No. 128]

On June 7, 2016, Plaintiff Raquel Sabrina Moore ("Plaintiff") filed a Motion to Re-Tax Costs. (ECF No. 128.) On June 23, 2016, Defendant United States of America ("Defendant") filed an opposition. (ECF No. 130.) On June 30, 2016, Plaintiff filed a reply. (ECF No. 131.) Having considered the parties' submissions and supporting exhibits, the Court hereby awards costs to Defendant in the amount of \$4,206.30.

I. BACKGROUND

On April 18, 2013, Plaintiff filed a negligence action against Defendant under the Federal Tort Claims Act. (ECF No. 1.) On May 9, 2016, following a four day bench trial, judgment was entered in favor of Defendant. (ECF No. 122.) On May 13, 2016, Defendant filed a Bill of Costs in the amount of \$4,312.30, and on May 26, 2016, Plaintiff filed an objection to the Bill of Costs. (ECF Nos. 123, 125.) The Clerk of Court held a telephonic Bill of Costs hearing on June 2, 2016 and issued an Order Taxing Costs in the amount of

1 \$4,264.30. (ECF No. 127.) Plaintiff contends that the Order Taxing Costs should be
 2 vacated, or in the alternative, reduced by the amount of \$319.80. (ECF No. 128 at 10.)

3 **II. DISCUSSION**

4 Plaintiff argues the Court should use its discretion to decline to award Defendant
 5 costs because Plaintiff will suffer severe financial hardship if costs are imposed.
 6 Specifically, Plaintiff represents that she is a low paid employee of the U.S. Department of
 7 Veterans Affairs (VA), and that her current monthly income only exceeds her monthly
 8 expenses by approximately \$37.70 per month. (*Id.* at 3.) In addition, Plaintiff indicates
 9 that she is a single mother who supports her child who is currently attending college, and
 10 that Plaintiff filed for bankruptcy during the pendency of the underlying litigation. (*Id.*)
 11 Plaintiff also claims Defendant is in a “better position to bear the burden of its own costs,
 12 as Defendant is the federal government of a first world nation.” (*Id.*) Plaintiff further
 13 contends Defendant has failed to properly itemize the costs involved and failed to provide
 14 the Court with sufficient details to assess the reasonableness of the amounts claimed. (*Id.*
 15 at 6.)

16 Defendant counters that it is entitled to recover its costs because this case is not
 17 extraordinary and that a severe injustice will not result if Plaintiff is ordered to pay costs.
 18 (ECF No. 130 at 8.) Defendant also provides supplemental information addressing the
 19 individual costs challenged by Plaintiff. (*Id.* at 13-15.)

20 **A. The Court’s Discretionary Authority to Award Costs**

21 Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, it is presumed that a
 22 prevailing party will recover its costs. *See* Fed. R. Civ. P. 54(d); *Quan v. Computer*
 23 *Sciences Corp.*, 623 F.3d 870, 888 (9th Cir. 2010), abrogated on other grounds by *Fifth*
 24 *Third Bancorp v. Dudenhoeffer*, 134 S.Ct. 2459 (2014). The losing party bears the burden
 25 of showing “why costs should not be awarded.” *Quan*, 623 F.3d at 888 (quoting *Save our*
 26 *Valley v. Sound Transit*, 335 F.3d 932, 944-45 (9th Cir. 2003)). Proper grounds for denying
 27 costs include: (1) a losing party’s limited financial resources; (2) misconduct by the
 28 prevailing party; (3) the chilling effect of imposing high costs of civil rights litigants; (4)

1 whether the issues in the case were close and difficult; (5) whether the prevailing party's
2 recovery was nominal or partial; (6) whether the losing party litigated in good faith; and
3 (7) whether the case presented a landmark issue of national importance. *Id.* at 888-89.

4 It is undisputed that Defendant was the prevailing party in this action, as Judgment
5 was entered on May 9, 2016, after the Court concluded that Plaintiff failed to prove
6 Defendant was negligent by a preponderance of the evidence. (ECF Nos. 121, 122.)
7 Therefore, it is presumed Defendant is entitled to recover costs, and Plaintiff bears the
8 burden of showing why costs should not be awarded. For the reasons discussed below,
9 looking at each of the relevant factors individually, the Court finds Plaintiff has not
10 demonstrated this case represents one of the "rare occasion[s] where severe injustice will
11 result from an award of costs (such as the injustice that would result from an indigent
12 plaintiff's being forced to pay tens of thousands of dollars of her alleged oppressor's legal
13 costs)." *Save our Valley*, 335 F.3d at 945.

14 1. The Losing Party's Financial Resources

15 The Court appreciates Plaintiff's financial situation; however, based on the
16 information provided in her submitted declaration, she is not indigent. Plaintiff has a full
17 time job at the VA, and she also receives benefits as a disabled Veteran. She has a total
18 net income of approximately \$4,449.00 per month. (ECF No. 128-1 at 2).¹ Although
19 Plaintiff claims that her monthly income barely covers her monthly expenses, she is able
20 to make charitable contributions on a monthly basis. (*Id.*) It is commendable that Plaintiff
21 is assisting her adult daughter with college expenses. However, it does appear that Plaintiff
22 has discretionary income. While the Court is sympathetic to Plaintiff's financial
23 circumstances, this factor does not support a denial of costs, particularly since it does
24 appear that Plaintiff has sufficient assets to make payments over time. *See Ardalan v.*

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27 ¹ The Court is unable to ascertain whether Plaintiff has any assets in investment,
28 savings, or checking accounts, as this information was not provided in the submitted
financial declaration.

1 *Monterey Inst. of Int'l Studies*, No. C 03-01075 JFPVT, 2004 WL 2047593, at *2-4 (N.D.
2 Cal. Sept. 14, 2004).

3 2. Misconduct by the Prevailing Party

4 There is no allegation by Plaintiff that Defendant engaged in misconduct or
5 impropriety in the litigation of this case. This case was professionally litigated by both
6 parties, and the Court was sincerely impressed with the high caliber of representation on
7 both sides of the aisle. This factor favors imposition of a cost award.

8 3. The Chilling Effect of Imposing High Costs of Civil Rights Litigants

9 The underlying action was not a civil rights case, as the sole cause of action was
10 negligence based on a slip and fall incident at a VA hospital. The amount of costs are not
11 unusually high or extraordinary for a case that was litigated for a period of more than three
12 years. *See Darensburg v. Metro. Transp. Comm'n*, No. C-05001597 EDL, 2009 WL
13 2392094 (N.D. Cal. Aug. 4, 2009) (comparing cases with small cost awards under \$9,000
14 and large cost awards ranging from \$16,268.71 to \$485,159.49). This factor favors the
15 imposition of a cost award.

16 4. Whether the Issues in the Case Were Close and Difficult

17 Plaintiff contends that because her case was meritorious that she should be relieved
18 from an award of costs. (ECF No. 128 at 4.) It is true that the Court found that the evidence
19 supported her contention that she slipped and fell in a puddle of Isagel liquid. However,
20 this factual finding was only one step towards meeting Plaintiff's burden in establishing
21 liability. As stated in the Court's Memorandum of Decision, Plaintiff failed to prove that
22 Defendant had actual or constructive knowledge of the dangerous condition that allegedly
23 caused her injury. (ECF No. 121 at 8-13.) As previously held by the Court, there was no
24 evidence introduced depicting how, when, or who spilled the Isagel. (*Id.*) The facts of the
25 underlying case were fairly straightforward, and the legal issues were not particularly
26 difficult or complex. This factor favors the imposition of a cost award.

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1 5. Whether the Prevailing Party's Recovery was Nominal or Partial

2 Defendant prevailed because Plaintiff failed to meet her burden of proof. There was
3 no partial recovery for Plaintiff based on comparative negligence, contributory negligence,
4 or any other legal theory. This factor favors the imposition of a cost award.

5 6. Whether the Losing Party Litigated in Good Faith

6 The Court does find that Plaintiff litigated this case in good faith. There were factual
7 issues that needed to be determined by a trier of fact. This factor favors the Court utilizing
8 its discretion in denying a cost award.

9 7. Whether the Case Presented a Landmark Issue of National Importance

10 Plaintiff contends that this case is particularly significant because, "in a broader
11 context, this case is about ensuring the medical needs of our Nation's veterans, in a safe
12 environment." (ECF No. 128 at 4.) The Court certainly recognizes the importance of
13 keeping our veterans safe. However, this case did not address specific health care issues
14 or allegations of delayed medical treatment, which may be defined as important national
15 issues. This case involved an isolated incident at the VA, and did not impact or affect
16 nationwide policy or federal decision making. Simply stated, the underlying matter was
17 not "an extraordinary, and extraordinarily important, case." *Ass'n of Mexican-Am.*
18 *Educators v. State of Cal.*, 231 F.3d 572, 593 (9th Cir. 2000) (en banc). This factor favors
19 the imposition of a cost award.

20 Given the foregoing, the Court finds that it would not be inequitable or improper to
21 award costs.

22 **B. Adequacy of Defendant's Cost Bill**

23 Plaintiff challenges the cost award based on the fact that numerous costs were not
24 reasonable and necessary, and that Defendant failed to comply with Civil Local Rule
25 54.1(b)(6)(c), which states:

26 The party seeking recovery must present documentary evidence in the form
27 of affidavits describing the documents copied, to whom they were provided,
28 the number of pages copied, and the cost per page, and the use of or intended
purpose for the items copied. If documents were provided only to the party

1 seeking recovery, that party must specify the purpose of acquisition and
2 photocopying of the documents served. In the absence of a specific showing,
3 recovery must be denied.

4 Civ. L.R. 54.1(b)(6)(c).

5 Plaintiff objects to the subpoena fees awarded to Defendant for the service of
6 subpoenas to the VA Hospital, Steven Alsing, MD, and attorney Craig Dwyer. (ECF No.
7 128 at 6.) The Court finds that the service of the subpoenas to the VA Hospital and Dr.
8 Alsing was reasonable and necessary, as it was appropriate for Defendant to subpoena
9 medical records and Dr. Alsing was a potential witness. However, Defendant has not
10 provided justification for serving attorney Dwyer twice, once on January 12, 2016 (\$58.00)
11 and again on February 8, 2016 (\$58.00). (ECF No. 123 at 4.) The Court acknowledges
12 that attorney Dwyer was a trial witness, and therefore the issuance of a subpoena was
13 necessary, but based on a lack of justification for the two separate subpoena costs, the Court
14 will adjust the costs award by deducting the sum of one of the service costs in the amount
15 of \$58.00.

16 Plaintiff contends that Defendant's Claim for Exemplification and Copies of Papers
17 should be denied for various reasons, including failure to demonstrate which copies were
18 required to be provided to the Court and to opposing counsel, as well as various issues
19 concerning photographs. (ECF No. 128 at 7-9.) The stated requirements in Civil Local
20 Rule 54.1 for the submission of a Bill of Costs requires a more particularized description
21 of the expended costs than is required under Rule 54 of the Federal Rules of Civil
22 Procedure. The purpose of the local rule's greater specificity is to ensure that opposing
23 counsel and the Court have a clear understanding of the nature and purpose of the claimed
24 costs. Plaintiff states that Defendant's Bill of Costs is incomplete because the motion did
25 not explain to whom the duplicated documents were provided, nor did the original
26 submission state the use of, or the intended purpose of, the items copied. (*Id.*) However,
27 Defendant's Attachment to Bill of Costs (Exhibit C) does contain a categorical listing of
28 each exhibit copied and the amount of the respective copy costs for each exhibit. (ECF
No. 123 at 21-24). In regard to these exhibits, four copies were made, which is consistent

1 with the Court's order that the Court was to be provided with two copies of the exhibit
2 binders, and a copy needed to be provided to opposing counsel. It is also reasonable that
3 one copy of the exhibits would be retained by Defendant. Therefore, Plaintiff had
4 knowledge based on the Court's previously issued Amended Trial Order as to the number
5 of exhibits binders (and exhibits) that had to be made by each party. (ECF No. 94 at 3.)
6 The Court finds that the cost in duplicating four copies of each exhibit was necessary and
7 reasonable.

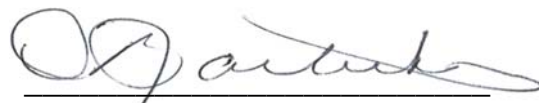
8 The Court further finds that the photographic copies were digital images printed on
9 8½ x 11 inch copy paper, and therefore these exhibits were not traditional photographs, as
10 contemplated in Civil Local Rule 54.1(7)(a) and (b). In addition, the Court finds that the
11 costs incurred in the duplication of these digital images were necessary and reasonable.

12 **III. CONCLUSION**

13 For the foregoing reasons, IT IS HEREBY ORDERED that Plaintiff's Motion to Re-
14 Tax Costs in **GRANTED IN PART** and **DENIED IN PART**. Defendant is awarded costs
15 in the amount of \$4,206.30.

16 IT IS SO ORDERED.

17 Dated: August 11, 2016



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19 **DAVID H. BARTICK**

20 United States Magistrate Judge
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